

Letter of Findings Number: 04-20110600
Use Tax
For Tax Years 2008-10

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ISSUE

I. Use Tax–Casual Sales.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-1-1](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of use tax on certain purchases.

STATEMENT OF FACTS

Taxpayer is an Indiana business. In the course of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased some tangible personal property, but had not paid sales tax at the time of purchase. The Department therefore issued proposed assessments for use tax and interest for the tax years 2008, 2009, and 2010. Taxpayer protests that some of its purchases were casual sales and were not subject to sales or use tax. At hearing, Taxpayer also protested that some items listed as taxable in the audit report were actually non-taxable items and that they should be removed from the Department's calculations of use tax due. Taxpayer provided documentation and analysis in support of its protest. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax–Casual Sales.

DISCUSSION

Taxpayer protests the imposition of use tax on its purchases of meteorites during the tax years 2008, 2009, and 2010. The Department based its determination that the meteorites were subject to sales or use tax on the lack of documentation available during the audit. Taxpayer states that the meteorites were purchased in the course of casual sales from other meteorite enthusiasts and not from anyone in the business of selling tangible personal property at retail. Also, Taxpayer states that the meteorites were purchased for aesthetic reasons and not for resale by Taxpayer. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in retail transactions and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

Taxpayer protests that the sales in question were casual sales and were not subject to use tax. [45 IAC 2.2-1-1\(d\)](#) provides:

The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

In the course of the protest process, Taxpayer provided documentation supporting its position that the meteorites were purchased from individuals and not from a person or entity regularly engaged in the business of making such sales. After a review of the documentation, Taxpayer has established that the sales in question were casual sales and so were eligible for the exemption provided under [45 IAC 2.2-1-1\(d\)](#). Taxpayer has met the burden of proving the imposition of use tax on its purchases of meteorites incorrect, as required by IC §

6-8.1-5-1(c).

Regarding Taxpayer's protest of other items listed as taxable in the audit report, Taxpayer provided a description of those items which it believes should be removed from the audit report. After a review of those items, only the three payments for admission to a sports camp in another state are non-taxable. The other items were purchases of tangible personal property from retail businesses and were therefore properly subject to sales and use tax.

In conclusion, Taxpayer has met its burden of proving the proposed assessment of use tax on its purchases of meteorites incorrect. The meteorites were purchased through casual sales, as provided by [45 IAC 2.2-1-1](#)(d). Taxpayer has met its burden of proving the proposed assessment of use tax on payments for admission to a sports camp in another state incorrect. Taxpayer has not met its burden of proving the remaining assessments of use tax incorrect. A supplemental audit will remove the payments for meteorites and the admission to the sports camp from the list of taxable purchases and will recalculate use tax and interest due on the remaining items.

FINDING

Taxpayer's protest is sustained in part and denied in part, as described above.

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